LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
DEC 3 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1966

No. 826

WINONA MAE FOSTER, *Petitioner*

v.

STATE OF OREGON, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

STEVE ANDERSON
Counsel for Petitioner
541 Court Street N.E.
Salem, Oregon

JAMES E. RITTER
Counsel for Petitioner
P. O. Box 787
Salem, Oregon

MERLIN ESTEP
Counsel for Petitioner
212 Masonic Building
Salem, Oregon

STEVE ANDERSON
Counsel of Record
541 Court Street N.E.
Salem, Oregon

SIEWERT PRINTING CO. - SALEM, OREGON

INDEX

	Page
Opinion Below	1
Jurisdiction	1
Question presented	2
Constitutional provisions involved	2
Statement	2
Reasons for granting the writ	4
Conclusion	5
Appendix A—Opinion below	6
Appendix B—Judgment below	7

CITATIONS

CASES:

Escobedo v. State of Illinois, 378 U. S. 478	5
Miranda v. State of Arizona, 384 U. S. 436	5

IN THE

Supreme Court of the United States

October Term, 1966

No._____

WINONA MAE FOSTER, *Petitioner*

v.

STATE OF OREGON, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

Winona Mae Foster prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Oregon, entered in the above-entitled case on September 9, 1966.

CITATION TO OPINION BELOW

The opinion of the Supreme Court of Oregon, printed in Appendix A hereto, is reported in Volume 83, Oregon Advance Sheets, No. 1, Page 95.

JURISDICTION

The judgment of the Supreme Court of the State of Oregon was entered on September 9, 1966. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257 (3).

QUESTION PRESENTED

Whether an explanation of the petitioner's rights made before the petitioner was taken into custody, or even accused of a crime, satisfies the requirement that an accused person be adequately and effectively apprised of the privilege against self-incrimination and of the right to counsel, such explanation having been made to the petitioner in the city hall by a city police department detective who then, later the same day, arrested her and took her to the county jail where an officer of the Oregon State Police, who did not mention her rights to her, obtained a confession upon which her conviction is based, and there having been no mention at all to her of her rights by anyone, either after she was accused, or after she was taken into custody.

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitutional provisions involved are as follows:

1. From the Fifth Amendment to the Constitution of the United States: " * * * nor shall any person * * * be compelled, in any criminal case, to be a witness against himself; * * * ." U.S.C.A. Constitution, Amendment V.

2. From the Sixth Amendment to the Constitution of the United States: "In all criminal prosecutions, the accused shall enjoy the right * * * to have the assitance of counsel for his defense." U.S.C.A. Constitution, Amendment VI.

STATEMENT

At approximately 11:00 a.m., October 1, 1965, the petitioner, an Indian girl 18 years of age with an eighth grade education, in the company of one Katherine Agnes Baldwin, went to the office of city detective E. J. Van Osdol, in the city hall of Salem, Oregon. Both women had been

drinking. (Transcript of trial testimony, pages 100, 101, 186) Officer Van Osdol testified that he explained their constitutional rights to them before either of them had revealed any information. (Tr., 73-76) At the time of such explanation the petitioner was not under arrest and had not been accused of any crime. (Tr., 80-81) Katherine Agnes Baldwin then orally admitted mailing hacksaw blades to a person committed to the Oregon State Hospital for observation in connection with a murder charge. The petitioner, Winona Mae Foster, made no admission prior to her arrest. (Tr., 77, 78 & 93) After the conversation in the office of detective Van Osdol, the petitioner attempted to leave. She ran from the city hall, pursued by a police officer who caught her about half a block away. A violent struggle ensued and the officer handcuffed her. (Tr., 188-190) The petitioner was booked in at the Marion County jail at 11:35 a.m., October 1, 1965. (Tr., 96) As the petitioner was being booked in by the matron of the county jail, Wayne Huffman, an officer of the Oregon State Police, questioned her and she orally admitted that she had participated in the mailing of the hacksaw blades. Officer Huffman did not explain her rights to her. (Tr., 89) Except for the explanation made by detective Van Osdol before the petitioner was even accused of a crime, no one ever at any time involved in this case said anything about her rights. The petitioner was arrested for and charged by information of the district attorney with the crime of AIDING COMMITTED PERSON TO ESCAPE, upon the basis of her alleged participation in the mailing of the hacksaw blades.

On October 27, 1965, the petitioner was found guilty by a jury in her trial upon said charge in the Circuit Court of the State of Oregon for the County of Marion. On October 29, 1965, she was sentenced to serve a term of three years in the Oregon State Penitentiary. On Sep-

tember 9, 1966, the petitioner's conviction was affirmed by the Supreme Court of Oregon.

How federal question is presented: In a hearing out of the presence of the jury, during the trial, the petitioner first raised the question here sought to be reviewed by objecting when the district attorney first asked a question of a witness calling for evidence of an admission made by petitioner when she was in custody, the ground of the objection being that such admission was not voluntary in that the petitioner had not been adequately informed of her constitutional rights. (Tr., 71) The objection was overruled. (Tr., 75) At the conclusion of all testimony offered pertaining to the question of voluntariness the petitioner objected to the admission of such evidence offered by the state on the ground that the petitioner had not been adequately and effectively advised of the right to remain silent, and to the services of an attorney. (Tr., 108) The trial court overruled the objection, stating its ruling in the following language: (Tr., 109-110)-

> THE COURT: "All right. I will deny the motion. I will allow the officers to testify before the jury and I find as a matter of fact preliminary to this matter being submitted to the jury, that the admissions made were freely and voluntarily given. I also state to you, that on the facts as presented, it is my conclusion that the defendant's constitutional rights were explained to her."

The petitioner raised the federal question here sought to be reviewed by assignment of error in the Supreme Court of Oregon. (Appendix A hereto)

REASONS FOR GRANTING THE WRIT

1. The decision of the court below is believed to be erroneous and not in accord with the decisions rendered by this Court in that it utterly ignores he procedural re-

quirement that a person charged with a crime must be told of his rights before he can be questioned concerning the crime charged. *Miranda v. State of Arizona*, 384 U.S. 436, *Escobedo v. State of Illinois*, 378 U.S. 478.

2. Clearly, the question presented is of importance in the administration of criminal justice and in the protection of the individual's privilege against self-incrimination and his right to counsel, since to accept an explanation of the individual's rights given before he is accused as satisfaction of the state's obligation to such individual, in the event that he is charged with a crime at some later time, would be to inject confusion into such cases concerning the length of time permissible between the making of such explanation and the specific accusation; furthermore, such a pre-accusation explanation would be ineffective to make the individual aware of his constitutional rights after the real experience of having been taken into custody.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

December 2, 1966.

STEVE ANDERSON
Counsel for Petitioner
541 Court Street N.E.
Salem, Oregon

JAMES E. RITTER
Counsel for Petitioner
P. O. Box 787
Salem, Oregon

MERLIN ESTEP
Counsel for Petitioner
212 Masonic Building
Salem, Oregon

APPENDIX A

Opinion Below

No. 8265—September 9, 1966

IN THE SUPREME COURT OF THE STATE OF OREGON

Department 1.

STATE OF OREGON, *Respondent*, *v.* WINONA MAE FOSTER, *Appellant*.

Appeal from Circuit Court, Marion County.

GEORGE A. JONES, Judge.

Argued and submitted July 8, 1966.

James E. Ritter, Salem, argued the cause for appellant. With him on the brief were Harland, Winslow & Ritter, Salem.

Rary D. Gortmaker, District Attorney, Salem, argued the cause and submitted a brief for respondent.

Before McALLISTER, Chief Justice, and O'CONNELL, GOODWIN, LUSK and HAMMOND, Justices.

AFFIRMED.

PER CURIAM.

Defendant appeals from a judgment of conviction for the crime of aiding a committed person to escape from the Oregon State Hospital.

Defendant contends that the trial court erred in allowing the testimony of police officers as to oral admissions made by her at a time when she was not represented by counsel, not advised of her right to counsel, and not advised of her right to remain silent. The record shows that

defendant was advised of these constitutional rights by the police officer who first interrogated her.

The trial court specifically found that defendant's constitutional rights were explained to her.

The judgment is affirmed.

APPENDIX B

Judgment Below

BE IT REMEMBERED that at a regular term of the SUPREME COURT of the State of Oregon begun and held at the courtroom in the city of Salem on the first Monday, the 7th day of MARCH 1966, WHEREUPON on this FRIDAY, the 9th day of SEPTEMBER 1966, the same being the 69th judicial day of said term, when the following proceedings were had:

STATE OF OREGON, *Respondent,*

v.

WINONA MAE FOSTER, *Appellant.*

Appeal from MARION County

This cause on July 8, 1966, having been duly argued and submitted upon and concerning all questions arising upon the record and then reserved for further consideration, and the court having fully considered all said questions as well as suggestions of counsel in their argument and briefs finds there is not error as alleged.

IT THEREFORE IS CONSIDERED, ORDERED and ADJUDGED that the judgment of the court below ren-

dered and entered in this cause be and the same hereby is in all things affirmed.

IT FURTHER IS ORDERED that respondent have and recover of and from appellant its costs and disbursements in this court taxed at $

IT FURTHER IS ORDERED that this cause be remanded to the court below from which the appeal was taken with directions to enter judgment in accordance herewith.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JAN 17 1967
JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 826

WINONA MAE FOSTER, Petitioner,

v.

STATE OF OREGON, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

BRIEF FOR RESPONDENT IN OPPOSITION

GARY D. GORTMAKER
Marion County District Attorney
Counsel for Respondent
Suite 350, Marion County Courthouse, Salem, Oregon 97301

DON W. SCHUSSLER
ALBIN W. NORBLAD
DALE R. DRAKE
IRA S. FEITELSON
DOUGLAS A. PORT
Deputy District Attorneys
Counsel for Respondent
Suite 350, Marion County Courthouse, Salem, Oregon 97301

GARY D. GORTMAKER
Marion County District Attorney
Counsel of Record
Suite 350, Marion County Courthouse, Salem, Oregon 97301

Capital City Printers, Salem, Oregon

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1966

No. _____

WINONA MAE FOSTER, Petitioner,
v.
STATE OF OREGON, Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Supreme Court of Oregon is reported in Volume 83, Oregon Advance Sheets, No. 1, page 95.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Whether petitioner's constitutional rights were violated by failure of police officers to advise her of her rights immediately after arrest, though admittedly having been so advised when she became a focal suspect.

STATEMENT

Respondent accepts the statement of the case set forth in the Petition.

REASONS FOR DENYING THE WRIT

1. Petitioner asserts a denial of the procedural requirements set forth in **Miranda vs. Arizona,** 384 U.S. 436 (1966), and **Escabedo vs. State of Illinois,** 378 U.S. 478 (1964). The **Miranda** decision is absolutely inapplicable in this case because petitioner's trial was concluded October 27, 1965, and this Court has held that **Miranda** does not apply to cases in which the trial began before June 13, 1966. **Cassidy vs. State of New Jersey,** ____ U.S. ____, 16 L. Ed. 2d 882, (1966). The **Escobedo** opinion is admittedly applicable because petitioner's trial began after June 22, 1964. **Ibid.**

2. The gravamen of petitioner's argument apparently is that she was not advised of her constitutional rights subsequent to arrest, though admitting she was so advised a brief time before the actual arrest. Respondent respectively submits that the Court need not take jurisdiction in this case because the procedural requirements of the **Escobedo** decision were met, by petitioner's own admission. (Petitioner's Brief, page 3).

3. There was approximately a half hour delay between the time petitioner presented herself at the police station and was advised of her constitutional rights and the time when she was booked in at the jail and admitted participating in the crime charged. Petitioner's sole allegation is that failure to re-advise her after formal arrest should be grounds for reversal. She alleges none of the facts present in the **Escobedo** case, or for that matter any substantive allegation which impugns the trustworthiness or voluntariness of her statement or any criticism whatever of the circumstances in which it was obtained. She does not allege coercion, refusal of access to counsel or

friends, or pressure of any kind prepartory to her statement. The **Escobedo** decision requires that a focal suspect be advised of his constitutional rights, but no where asserts that the advice must, of necessity, be repeated after the formal arrest. **Escobedo vs. State of Illinois,** 378 U. S. 478 (1964).

CONCLUSION

Respondent submits that no real question is presented for the Court to decide and asks that the Petition for a writ of certiorari be denied.

Respectfully submitted,

/s/ Gary D. Gortmaker
Counsel for Respondent